

1. Application

- 1.1 These terms and conditions apply to the supply of the Goods and/or Services described in the Purchase Order and together, these terms and conditions and the Purchase Order constitute the Agreement.
- 1.2 If and to the extent of any inconsistency between these terms and conditions and the Purchase Order, these terms and conditions will prevail to the extent of the inconsistency.
- 1.3 Any other terms and conditions attached to the Purchase Order or included in an invoice, delivery docket or other document issued by the Supplier are expressly excluded and do not bind RMH.
- 1.4 If RMH and the Supplier have entered into a Blanket Pricing Agreement or contract for the supply of the Goods and/or Services, then the terms and conditions of that Blanket Pricing Agreement or contract (as applicable) will apply to the exclusion of these terms and conditions.

2. Supply and delivery of Goods

- 2.1 The Supplier must supply the Goods to RMH in accordance with this Agreement (including any Specification) and any reasonable directions given by RMH from time to time.
- 2.2 The Supplier must deliver the Goods to the location, and by the date and time, specified in the Purchase Order or as otherwise specified by RMH in writing.
- 2.3 Delivery has not occurred until it is acknowledged in writing by an authorised representative of RMH and RMH accepts no responsibility for any Goods delivered other than in accordance with clause 2.2.
- 2.4 All Goods delivered must be accompanied by a delivery docket detailing the Purchase Order number and any other information reasonably required by RMH from time to time.
- 2.5 Before delivery of the Goods, the Supplier will provide:
- (a) evidence to RMH that the Goods are insured with a reputable insurer; and
 - (b) a copy of all instruction manuals and material safety data sheets applicable to the Goods.

3. Acceptance or rejection of Goods

- 3.1 If the Goods conform with this Agreement (including any Specification), RMH will accept the Goods by written notice to the Supplier. Acknowledgment of delivery by or on behalf of RMH or payment for the Goods will not constitute acceptance for the purposes of this Agreement.
- 3.2 If the Goods:

(a) do not conform with this Agreement (including any Specification); or

(b) are defective or damaged, RMH may reject the Goods by written notice to the Supplier (including reasons for rejection).

3.3 If RMH does not give written notice of acceptance or rejection of the Goods within 30 days of delivery of the Goods, the Goods will be deemed to have been accepted on the date of delivery.

3.4 Without limiting any other remedy available to RMH, if the Goods are rejected RMH may direct the Supplier to (at RMH's option):

(a) repair and/or replace the Goods within a reasonable timeframe, at the Supplier's cost; or

(b) if the Supplier cannot repair and/or replace the Goods within a reasonable timeframe:

(i) pay the reasonable costs incurred by RMH to have the Goods repaired and/or replaced by a third party; or

(ii) refund to RMH any amount already paid to the Supplier for the rejected Goods.

3.5 The Supplier must, at its cost, collect and remove any rejected Goods within 7 days of receiving notice of rejection from RMH, or such other period agreed by RMH in writing. If the Supplier fails to collect and remove the Goods in accordance with this clause 3.5 then RMH may, at the Supplier's cost and election, return, dispose or destroy the Goods.

3.6 RMH is not obliged to pay for Goods that are rejected.

4. Title and risk in Goods

4.1 Title in the Goods will pass to RMH when the Goods are accepted. Risk in the Goods will pass to RMH when the Goods are delivered in accordance with clause 3.

5. Warranties in relation to Goods

5.1 In relation to the Goods, the Supplier warrants to RMH that:

(a) it has the right to sell, and transfer full and unencumbered title to, and property in, the Goods to RMH; and

(b) the Goods:

(i) are new when delivered (unless otherwise agreed in writing by RMH);

(ii) are fit for the purpose stated in the Purchase Order (or, if no purpose is stated, the purpose for

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- which the Goods would ordinarily be used); and
- (iii) are free from defects and of merchantable quality.
- 5.2 If the Supplier is not the manufacturer of the Goods, the Supplier must obtain the full benefit of any manufacturer's warranties for RMH.
- 5.3 Without limiting anything in clause 3, during the Warranty Period, the Supplier must, at its own cost and without delay, repair and/or replace Goods that do not satisfy the warranties in clause 5.1(b), provided RMH has used the Goods in accordance with all provided instruction manuals applicable to the Goods.
- 5.4 For the avoidance of doubt, clause 5.3 applies even if the Goods have been accepted.
- 6. Supply of Services**
- 6.1 The Supplier must supply the Services:
- (a) in accordance with this Agreement (including any Specification) and any reasonable directions given by RMH from time to time; and
- (b) to meet any timeframes and milestones specified in the Purchase Order and otherwise in a timely and efficient manner.
- 6.2 The Supplier warrants to RMH that the Services:
- (a) are fit for the purpose stated in the Purchase Order (or, if no purpose is stated, the purpose for which the Services would ordinarily be required); and
- (b) will be performed with due skill, care and diligence and using appropriately qualified, trained and experienced personnel.
- 6.3 Without limiting any other remedy available to RMH, if the Services are not supplied in accordance with this Agreement (including any Specification) (**Non-Conforming Services**), RMH may direct the Supplier to (at RMH's option):
- (a) correct the Non-Conforming Services within a reasonable timeframe, at the Supplier's cost; or
- (b) if the Supplier cannot correct the Non-Conforming Services within a reasonable timeframe:
- (i) pay the reasonable costs incurred by RMH to have the Non-Conforming Services corrected by a third party; or
- (ii) refund to RMH any amount already paid to the Supplier for the Non-Conforming Services.
- 6.4 RMH is not obliged to pay for Non-Conforming Services.
- 7. Price**
- 7.1 The Supplier must supply the Goods and/or Services for the Price.
- 7.2 Unless otherwise agreed by RMH in writing, the Price includes all applicable taxes and fees or charges for packaging, transport, insurance, delivery, installation, loading, unloading, storage and any other cost incurred by the Supplier to supply the Goods and/or Services to RMH.
- 7.3 Any variation to the Price must be approved by RMH in writing.
- 8. Invoicing and payment**
- 8.1 Unless otherwise agreed by RMH in writing, the Supplier must provide an invoice to RMH for the Price on delivery of the Goods or on completion of the Services (as applicable).
- 8.2 The invoice must set out the Purchase Order number, any information required by law (including the GST Act), and such other information as RMH may reasonably require to process the invoice.
- 8.3 RMH will pay the Supplier within 30 days of receipt of a valid and correctly rendered tax invoice.
- 8.4 Payment of an invoice is payment on account only and is not to be taken as evidence that the Goods and/or Services have been supplied in accordance with this Agreement.
- 9. GST**
- 9.1 The terms used in this clause 9 have the same meanings given to them in the GST Act.
- 9.2 Unless otherwise expressly stated, all prices or other sums payable, or consideration to be provided under or in accordance with this Agreement are exclusive of GST.
- 9.3 If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with this Agreement.
- 10. Confidential Information**
- 10.1 Each party and its personnel must keep the Confidential Information of the other party confidential and secure and must not disclose, or cause or permit the disclosure of, the other

- party's Confidential Information to any person except:
- (a) to its professional advisors, insurers and auditors on a need-to-know basis for the purpose of this Agreement;
 - (b) if permitted or required by, or to comply with, law; or
 - (c) with the prior written consent of the other party.
- 10.2 Each party may require the return or destruction of its Confidential Information at any time by giving written notice to the other party, provided that the other party may retain one copy for its internal records.
- 10.3 Each party must promptly notify the other party in writing if it becomes aware of any breach or potential breach of this clause 10 and comply with all reasonable directions of the other party.

11. Privacy

- 11.1 To the extent the Supplier collects, uses, discloses, stores, transfers or otherwise handles Personal and Health Information in connection with this Agreement, the Supplier acknowledges and agrees that it will be bound by the Information Privacy Principles (and any applicable code of practice) and Health Privacy Principles (together, the **Privacy Principles**) in the same way and to the same extent as RMH would be bound.
- 11.2 The Supplier must promptly notify RMH in writing if it becomes aware of any breach or potential breach of clause 11.1 and comply with all directions of RMH.

12. Intellectual Property Rights

- 12.1 All Agreement IP Rights are, upon their creation, owned by RMH and the Supplier assigns and agrees to assign to RMH all Agreement IP Rights on creation.
- 12.2 RMH grants to, or will obtain for, the Supplier a non-exclusive, revocable, non-transferrable and royalty-free licence to use the Agreement IP Rights to the extent necessary for the Supplier to fulfil its obligations under this Agreement.
- 12.3 The Supplier grants to, or will obtain for, RMH a non-exclusive, transferrable, royalty-free licence to use the Supplier's Existing IP Rights to the extent necessary for RMH to receive the full benefit of the Goods and/or Services.
- 12.4 The Supplier warrants to RMH that use of the Agreement IP Rights or the Supplier's Existing IP Rights by RMH or its personnel as permitted under this Agreement will not infringe the Intellectual Property Rights of any third party.

13. Liability

- 13.1 The Supplier indemnifies RMH and each of its personnel from and against any liability, loss, cost, damage or expense (including in connection with a third party claim) sustained or incurred by RMH or its personnel arising out of or in connection with this Agreement and:
- (a) any personal injury or death caused by an act or omission of the Supplier or its personnel;
 - (b) any loss of, or damage to, tangible or intangible property caused by an act or omission of the Supplier or its personnel;
 - (c) any negligent, fraudulent, unlawful or wilfully wrongful act or omission of the Supplier or its personnel;
 - (d) a breach of clauses 10 (Confidential Information) or 11 (Privacy) by the Supplier or its personnel; or
 - (e) any claim that the use of the Agreement IP Rights or the Supplier's Existing IP Rights by RMH or its personnel as permitted under this Agreement infringes the Intellectual Property Rights of any third party,
- except to the extent that a negligent act or omission of, or breach of this Agreement by, RMH or its personnel has contributed to the liability, loss, cost, damage, or expense.
- 13.2 Notwithstanding any other clause in this Agreement, neither party will have any liability to make any payment to the other party, by way of indemnity, damages or otherwise, in respect of any consequential loss suffered or incurred by the other party.

14. Insurance

- 14.1 The Supplier must obtain and maintain, for the periods specified in clause 14.2, insurance cover, including public liability, product liability and/or professional indemnity insurance cover (as applicable), to a value sufficient to cover any loss or costs that may be incurred and for which the Supplier may be liable in connection with this Agreement.
- 14.2 The Supplier must maintain the insurance cover specified in clause 14.1 from at least the time of delivery of the Goods and/or supply of the Services until:
- (a) for product liability insurance – the longer of any Warranty Period and 3 years from acceptance of the Goods;
 - (b) for professional indemnity insurance – 6 years from the supply of the Services;
 - (c) for all other insurances – such time as is sufficient to cover any loss or costs that

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- may be incurred and for which the Supplier may be liable in connection with this Agreement.
- 14.3 The Supplier must, within 10 Business Days of a request by RMH, provide RMH with certificates of currency evidencing its compliance with this clause 14.
- 15. Termination**
- 15.1 Either party (**Terminating Party**) may terminate this Agreement with immediate effect by written notice to the other party if:
- (a) the other party commits a breach of this Agreement which is not capable of remedy;
 - (b) the other party commits a breach of this Agreement which is capable of remedy and fails to remedy the breach within 10 Business Days of receiving notice of the breach from the Terminating Party; or
 - (c) an insolvency event occurs in relation to the other party, including if the other party is wound up, dissolved, becomes insolvent or has a liquidator, administrator, receiver and/or manager appointed.
- 15.2 RMH may terminate or reduce the scope of this Agreement by giving 14 days' written notice to the Supplier if any statutory, funding or policy change has the effect of substantially impairing RMH's ability to perform its obligations under this Agreement.
- 15.3 If RMH terminates this Agreement, RMH will pay the Supplier for Goods already delivered and/or Services already supplied to RMH in accordance with this Agreement up to the date of termination. RMH is not otherwise liable to pay the Supplier any amount in connection with the termination of this Agreement.
- 15.4 The right of termination is in addition to any other available remedies and termination of this Agreement will not affect the operation of clauses 10 (Confidential Information), 11 (Privacy), 12 (Intellectual Property Rights), 13 (Liability), 14 (Insurance), and this clause 15 (Termination) or any other clause which, by its nature, is intended to survive termination of this Agreement.
- 16. Compliance with law and policy**
- 16.1 The Supplier must, in performing its obligations under this Agreement, comply with:
- (a) all RMH policies, procedures and standards relevant to the supply of the Goods and/or Services and made available to the Supplier by RMH from time to time, including in relation to health and safety; and
 - (b) all laws relevant to the supply of the Goods and/or Services including, without limitation, anti-bribery, anticorruption, anti-money laundering and modern slavery laws.
- 16.2 The Supplier warrants that it is aware of and will comply with the Victorian State Government's Supplier Code of Conduct, which is available at the Victorian Government Purchasing Board website:
<http://www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-ConductVGPB> Supplier Code of Conduct.
- 17. Assignment and sub-contracting**
- 17.1 The Supplier must not assign or sub-contract any of its rights or obligations under this Agreement without the prior written consent of RMH (which may be given conditionally).
- 17.2 The Supplier will remain fully responsible and liable for the acts and omissions of any approved sub-contractor and for payments to any approved sub-contractor, including in respect of superannuation.
- 17.3 The Supplier must ensure that each approved sub-contractor complies with the relevant terms and conditions of this Agreement.
- 18. General**
- 18.1 **Notices:** All notices and communications given under this Agreement must be in writing and directed to the recipient and at the address specified in the Purchase Order.
- 18.2 **Variation:** Any variation to this Agreement must be in writing and signed by the parties.
- 18.3 **Waiver:** A provision of this Agreement or a right created under it may not be waived except in writing and signed by the parties. A failure of a party to exercise a right arising out of this Agreement does not constitute a waiver of that right.
- 18.4 **Time:** Time is of the essence in relation to the supply of the Goods and/or Services.
- 18.5 **Governing law:** This Agreement is governed by the laws of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia.
- 19. Definitions**
- 19.1 In this Agreement:
- (a) **Agreement IP Rights** means any Intellectual Property Rights created or developed by or on behalf of the

- Supplier in the course of fulfilling its obligations under this Agreement.
- (b) **Business Day** means any day not being a Saturday, Sunday, declared public holiday in Melbourne, Australia.
- (c) **Blanket Pricing Agreement** means an agreement between RMH and the Supplier for the supply of goods specified in the RMH blanket pricing catalogue, for a fixed price.
- (d) **Confidential Information** means any technical, scientific, commercial, financial or other information of, about or related to a party (**Disclosing Party**) which is designated by the Disclosing Party as confidential and which is disclosed, made available, communicated or delivered to the other party (**Receiving Party**) in connection with this Agreement or the Goods and/or Services, but excludes information which:
- (i) is in or which subsequently enters the public domain, other than as a result of a breach of this Agreement;
 - (ii) the Receiving Party can demonstrate was already in its possession or was independently developed by it; or
 - (iii) is lawfully obtained by the Receiving Party from another person entitled to disclose such information.
- (e) **Goods** means the goods specified in the Purchase Order.
- (f) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (g) **Health Privacy Principles** means section 141 of the *Health Services Act 1988* (Vic) and the health privacy principles set out in the *Health Records Act 2001* (Vic).
- (h) **Information Privacy Principles** has the meaning given in the *Privacy and Data Protection Act 2014* (Vic).
- (i) **Intellectual Property Rights** means all intellectual property rights at any time recognised by law, including all present and future copyright, all rights in relation to inventions (including patents), registered and unregistered trademarks, trade names, domain names, confidential information (including trade secrets and know-how), registered designs, circuit layouts, and all other proprietary rights, whether registered or unregistered, resulting from intellectual activity in the industrial, scientific, literary or artistic fields, and all applications and rights to apply for any of the same.
- (j) **Personal and Health Information** means 'personal information' within the meaning of the *Privacy and Data Protection Act 2014* (Vic) and 'health information' within the meaning of the *Health Records Act 2001* (Vic).
- (k) **Purchase Order** means a purchase or other form of order issued by RMH for the supply of the Goods and/or Services, made under or incorporating these terms and conditions and includes any Specification.
- (l) **Price** means the price for the Goods and/or Services, as specified in the Purchase Order.
- (m) **RMH** means Melbourne Health (trading as The Royal Melbourne Hospital) ABN 73 802 706 972.
- (n) **Services** means the services specified in the Purchase Order.
- (o) **Specification** means the specification to which the Goods and/or Services must conform, as attached to, accompanying or described in the Purchase Order or as otherwise applying to the Goods and/or Services.
- (p) **Supplier** means the entity supplying the Goods and/or Services under this Agreement, as specified in the Purchase Order.
- (q) **Supplier's Existing IP Rights** means all Intellectual Property Rights used by the Supplier in connection with the supply of the Goods and/or Services that existed prior to, and arose independently of, this Agreement.
- (r) **Warranty Period** means the warranty period for the Goods specified in the Purchase Order or, if no such period is specified, 12 months from the date of acceptance by RMH or such longer period agreed between the parties in writing.